

BEFORE THE
BOARD OF PSYCHOLOGY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Statement of Issues Against:

DAVID M. SCORSE
939 Cabana Avenue
La Puente, CA 91744

Respondent.

Case No. X-53

OAH No. L2002100167

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by
the Board of Psychology as its Decision in the above-entitled matter.

This Decision shall become effective March 12, 2003.

IT IS SO ORDERED.

Date: February 10, 2003

P. Harmell, PhD

PAMELA HARMELL, PhD, PRESIDENT
BOARD OF PSYCHOLOGY
DEPARTMENT OF CONSUMER AFFAIRS

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PROPOSED DECISION

James Ahler, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Diego, California, on December 16, 2002.

Samuel K. Hammond, Deputy Attorney General, represented Complainant Thomas S. O'Connor, the Executive Officer of the Board of Psychology, Department of Consumer Affairs, State of California.

David M. Scorse represented himself and was present throughout the administrative hearing.

The matter was submitted on December 16, 2002.

FACTUAL FINDINGS

Jurisdictional Matters

1. On August 20, 2002, the Statement of Issues was signed on behalf of Complainant Thomas S. O'Connor, the Executive Officer of the Board of Psychology, Department of Consumer Affairs, State of California.

The Statement of Issues and other jurisdictional documents were served on David M. Scorse (Scorse or Respondent).

By Notice of Defense dated August 28, 2002, Scorse requested an administrative hearing.

On December 16, 2002, the administrative record was opened. Jurisdictional documents were presented. Sworn testimony and documentary evidence was received. Closing arguments were given, the record was closed and the matter was submitted.

2. The Statement of Issues essentially alleges that Scorse's application should be denied because he represented that he held a doctoral degree in connection with his services as a qualified rehabilitation consultant in Minnesota between 1988 through 1995 when that was not the case, that Scorse over-billed the State of Minnesota for vocational rehabilitation services he provided, that Scorse's Minnesota certification as a qualified rehabilitation consultant was revoked as a result of this fraud, and that Scorse did not advise Christine Sells, Ph.D., of all the events occurring in the State of Minnesota when he requested that she serve as his qualified primary supervisor.

Respondent's Background and Education

3. David M. Scorse was born on November 11, 1947, in Phoenix, Arizona. He grew up in Southern California, graduating from La Puente High School in 1965.

Scorse attended Mt. San Antonio Junior College from 1965 through 1967. In 1967, Scorse enlisted in the United States Army. Scorse was on active duty for three years, serving one year in Vietnam as a dental assistant. He was released from active military duty in September 1970 and received an honorable discharge thereafter.

Scorse returned to Mt. San Antonio Junior College and received an Associate of Arts degree. Scorse then attended California State University at Fullerton, receiving a Bachelor of Arts degree in Psychology in 1973. Scorse enrolled in a graduate program at California State University at Fullerton and received a Master of Science degree in Special Education in 1975.

4. Scorse worked at the Harbor Regional Center and at the San Gabriel Regional Center from 1973 through 1978, providing services to developmentally disabled clients under the Lanterman Act.

Scorse worked briefly at the Hopi Indian Reservation in Arizona in 1978 as a social services director, providing services to developmentally disabled persons.

Scorse was briefly an administrator at the Ennoble group home in 1979 and he served as a counselor at Ayudate New Pride group home from late 1979 through 1981.

5. In 1981, Scorse began working in the field of vocational rehabilitation. He served as a vocational rehabilitation counselor at Eclectics Vocational Rehabilitation from 1981 until 1983. In 1983, Scorse and several others founded RPM Vocational Services, where he worked until 1985. In 1985, Scorse and a partner opened South Rehabilitation Services, where he worked through 1986.

6. In 1986, Scorse founded DMS and Associates, a vocational rehabilitation firm. Scorse provided vocational rehabilitation services to qualified California workers until 1989.

In 1989, Scorse moved his operation to Minnesota.

Respondent's Operation and Conduct in Minnesota

7. On December 29, 1988, Scorse signed an application for registration as a qualified rehabilitation counselor (QRC) that was filed with the Department of Labor and Industry, State of Minnesota. In his application, Scorse represented that he had received a Doctorate in Education (Ed.D.) from Brigham Young University. In his application, Scorse acknowledged, "I understand that any omission or misrepresentation may result in rejection or revocation of registration."

8. In a cover letter accompanying his application, Scorse stated that his academic transcripts from California State University at Fullerton were enclosed, but the transcript from Brigham Young University was not enclosed because it had not arrived. Scorse requested that he be certified as a QRC because the transcripts he enclosed met all of the educational requirements for registration as a QRC in Minnesota.

9. The Department of Labor and Industry granted Scorse's application.

10. After Scorse was registered as a QRC, he sent out letters of introduction to insurance carriers on the stationery of his firm, DMS and Associates, advising of his status as a registered QRC. Scorse signed these letters, "Dr. David M. Scorse, Ed.D., QRC 184, Psychologist, Rehabilitation Consultant."

11. At all times relevant to Scorse's service as a QRC in Minnesota, the amount a QRC could legally charge for services was capped by various rules.

12. A disgruntled client complained about Scorse's services and an investigation was initiated. As a result of that investigation, a disciplinary proceeding commenced seeking the revocation of Scorse's registration as a QRC.

13. On November 2, 1995, following a contested administrative hearing, the Rehabilitation Review Panel, Department of Labor and Industry, State of Minnesota, following a *de novo* hearing in, "*In the Matter of the QRC Registration of: David M. Scorse*," concluded that Scorse had obtained his QRC certification through fraud, that he had violated maximum billing rates for services and for travel, that he had unlawfully performed claims adjustment services and that he had fraudulently represented himself as a psychologist.

The Rehabilitation Review Panel revoked Scorse's QRC certification. The panel directed Scorse to pay a \$1,000 penalty for obtaining his certification by fraud, a \$9,000 penalty to the Special Compensation Fund for overcharges, a \$5,000 penalty for unlawfully performing claims adjustment services and a \$10,000 penalty for misrepresenting himself as a psychologist.

14. An appeal was taken by the Department of Labor and Industry to the Workers' Compensation Court of Appeals, State of Minnesota, on several legal matters. Scorse was not a party to that appeal.

15. On October 18, 1996, in civil litigation entitled, "*State of Minnesota, by Gary W. Bastian, Commissioner, Department of Labor and Industry, Plaintiff, vs. David M. Scorse, Defendant*" (an action filed in the Sixth Judicial District, County of St. Louis, State of Minnesota, bearing Court File No. C1-96-600288), Scorse stipulated that he had not appealed from the decision of the Rehabilitation Review Panel, that he did not contest the imposition of fines in the amount of \$27,565.69, and that he consented to judgment being entered against him in that amount.

16. On December 13, 1996, the Workers' Compensation Court of Appeals, State of Minnesota, affirmed the Rehabilitation Review Panel's decision except for a technical legal conclusion not bearing on issues of Scorse's misrepresentation and overcharges.

17. In 1999, Scorse and the Office of the Attorney General, State of Minnesota, entered into a payment agreement in which Scorse acknowledged he owed \$27,565.60, plus interest in excess of \$3,250, and in which he agreed to pay \$15,000 in full and final settlement of that claim not later than May 30, 1999. Upon receipt of payment, the State of Minnesota agreed to file a full satisfaction of judgment.

18. Scorse paid \$15,000 in accordance with the payment agreement via a \$15,000 cashiers check dated May 28, 1999, issued by Washington Mutual and payable to the "Minnesota Dept. of Labor & Industry."

The State of Minnesota filed a satisfaction of judgment on June 2, 1999.

Respondent's Activities after Returning to California

19. Scorse returned to California in 1995.

He enrolled at the Southern California University for Professional Studies to pursue his goal of obtaining a doctorate degree. Scorse participated in a doctoral program from January 1, 1995 through March 5, 1999.

On either March 5, 1999, or on March 5, 2000, Scorse received his Psy.D.¹

¹ In his testimony at the administrative hearing, Scorse said he received his Psy.D. on March 5, 1999. In his payment agreement with the State of Minnesota, which required that Scorse pay \$15,000 on or before May 30, 1999, Scorse signed the agreement as "David M. Scorse, Psy.D." However, the Application for Psychological Assistant form Scorse completed and filed with the Board of Psychology indicated that he was awarded a Doctor of Psychology on March 5, 2000.

20. While Scorse was pursuing his doctorate, he was employed as a foster family care worker and as a social worker by various foster family agencies. He continues this employment. Scorse was under no duty to disclose the events in Minnesota to his employers.

21. On April 16, 2002, Scorse submitted an application to become registered as a psychological assistant with the Board of Psychology.

In his application Scorse stated that he wished to be employed by Christine Sells, Ph.D. (Dr. Sells), a licensed psychologist employed at California Family Multi-Service Center, in Surfside, California.

Scorse signed the application on April 5, 2002. Dr. Sells signed the application on April 12, 2002.

22. The Declaration of Christine Sells, Ph.D. (Dr. Sells), was received as direct evidence under Government Code section 11514. According to the declaration:

"Before agreeing to assume the responsibility of a supervisor, I interviewed David Scorse. David Scorse produced evidence that he had a doctorate degree in psychology from the Southern California University for Professional Studies. David Scorse informed me that the State of Minnesota revoked his registration as a Qualified Rehabilitation Consultant (QRC) because that state learned in the course of an investigation that he did not possess a doctorate degree. David Scorse explained the circumstances leading to the revocation of his QRC registration. He said in the course of his duties as a QRC, he signed papers as a 'doctor' for a 'functioning capacities assessment' on an injured worker, who was also his client. The injured client became disgruntled and his agent reported David Scorse to the Department of Labor for the State of Minnesota.

David Scorse did not inform me that the State of Minnesota revoked his QRC registration in part because he falsified information on his 1988 application for registration as a QRC by stating that he possessed a doctoral degree in special education. And David Scorse did not inform me that the State of Minnesota revoked his registration as a QRC in part because he over-billed the State of Minnesota for services. . ."

23. In the questionnaire he submitted with his application, Scorse checked a box for "Yes" in response to the following questions:

"7. Have you had a license, registration, certificate or credential to practice psychology, or any other profession or occupation, suspended, revoked, reprimanded or subjected to disciplinary action in any state or country? **If yes, please explain on a separate sheet of paper.**

8. Have you voluntarily relinquished a license, registration, certificate or credential to practice psychology or any other profession or occupation in any state or country? **If yes, please explain on a separate sheet of paper.**"

24. In his written explanation for those questions, Scorse wrote in part:

"During the course of being the proprietor of DMS and Associates, a Vocational Rehabilitation Firm, and functioning as a Qualified Rehabilitation Consultant/QRC in the State of Minnesota, I (MMS) falsified my QRC registration by indicating that I possessed a Doctoral Degree in Educational Psychology and proceeded to use the title of doctor.

...

Please note, at no time did I (DMS) provide psychological services or advertise as such. I (DMS) just engaged the title of doctor.

...

After the investigation, I (DMS) was notified to cease further rehabilitation services. I (DMS) subsequently voluntarily relinquished my Minnesota QRC status. The State of Minnesota proceeded with disciplinary action, i.e., revocation of QRC status, levy of a fine (Please see attached court documents); and notified the Commission on Rehabilitation Counselor Certification to revoke my CIRS Certificate. . ."

25. Scorse admitted that he did not tell Dr. Sells all the reasons his QRC credential was revoked, more specifically that he had misrepresented his educational accomplishments in his application for QRC certification and that he had over-billed for vocational rehabilitation services he provided.

26. Scorse has never held a license issued by the Board of Psychology.

Respondent's Explanations

27. Concerning his misrepresentations about his educational background, Scorse testified:

"It was one of the stupidest things I've ever done. . . For the past decade I have pretty much been a fraud in regards to my educational level. . . I have embarrassed myself pretty severely. . . I just don't want to be embarrassed any more. . . I am very sorry for what I have done."

28. Concerning his future, Scorse testified:

"I would really like an opportunity to proceed with the rest of my life . . . and to have the opportunity to study and learn more and to sit for the [Board of Psychology] exam."

29. Scorse has not sought any psychiatric or psychological counseling to investigate the reasons he misrepresented his credentials or engaged in fraud.

Costs of Investigation and Enforcement

30. Natalie Zellmer (Investigator Zellmer), a Senior Investigator with the Medical Board of California was assigned to investigate this matter. Investigator Zellmer contacted the State of Minnesota, reviewed various materials, conducted an Internet investigation, collected evidence, spoke with Scorse and drafted an investigative report. She testified that she spent 35 hours investigating this matter and her services were billed at the rate of approximately \$88 per hour.

31. The Deputy Attorney General prosecuting this matter submitted a declaration in which he identified 22 hours of legal services provided in the prosecution of the matter. The billing rate was \$100 per hour.

32. Reasonable costs of investigation and enforcement are \$5,280. Whether the record supports an order directing Scorse to pay reasonable costs of investigation and enforcement is a legal question based on this record.

LEGAL CONCLUSIONS

Standard of Proof

1. The burden of proof is on the applicant for a license or permit. See, *Martin v. Alcoholic Beverage Control Bd.* (1959) 52 Cal.2d 259, 265.

The standard of proof an applicant must meet is a preponderance of the evidence. See, *Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 855.

A "preponderance of the evidence" means evidence that has more convincing force than that opposed to it. See, *BAJI* 2.60.

The Applicable Statutes

2. Business and Professions Code section 2960 provides in pertinent part:

"The board may refuse to issue any registration . . . if the applicant . . . has been guilty of unprofessional conduct. Unprofessional conduct shall include, but not be limited to:

...

(n) The commission of any dishonest, corrupt, or fraudulent act. . ."

3. Business and Professions Code section 2913 provides in pertinent part:

...

"(f) No person shall practice as a psychological assistant who is found by the board to be in violation of Section 2960. . ."

4. Business and Professions Code section 2960.6 provides in pertinent part:

"The board may deny any application . . . for any of the following:

...

(b) The revocation . . . or other disciplinary action by any board established by this division, or the equivalent action of another state's licensing agency, of a healing arts practitioner shall constitute grounds for disciplinary action against . . . that registrant under this chapter. The grounds for the action shall be substantially related to the qualifications, functions, or duties of a . . . psychological assistant. A certified copy of the decision or judgment shall be conclusive evidence of that action."

5. Business and Professions Code section 475 provides in pertinent part:

"(a) Notwithstanding any other provisions of this code, the provisions of this division shall govern the denial of licenses on the grounds of:

...

(3) Commission of any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another.

(4) Commission of any act which, if done by a licensee of the business or profession in question, would be grounds for suspension or revocation of license. . ."

6. Business and Professions Code section 480 provides in pertinent part:

"(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

...

(2) Done any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another; or

(3) Done any act which if done by a licensee of the business or profession in question, would be grounds for suspension or revocation of license.

The board may deny a license pursuant to this subdivision only if the . . . act is substantially related to the qualifications, functions or duties of the business or profession for which application is made. . .”

Cause to Deny the Application

7. Cause exists under Business and Professions Code sections 2960, 2914, 475 and 480 to deny Scorse's application for registration as a psychological assistant. Between 1988 and 1995, Scorse engaged in dishonesty and fraud by representing that he held a doctorate degree from Brigham Young University and that he was a psychologist when that was not the case. He did so to benefit himself and DMS and Associates. Scorse over-billed for services he provided in his capacity as a registered QRC. Scorse's misrepresentations and over-billings constituted unprofessional conduct. Scorse's misconduct was substantially and adversely related to the qualifications, functions and duties of a psychological assistant. Misrepresentation and over-billings would be grounds for suspension and revocation of any license issued by the Board of Psychology in California. In addition, Scorse was dishonest in his dealings with Dr. Sells in order to become employed by her as a psychological assistant.

This conclusion is based on Factual Findings 7-11, 13, 14, 16, 21, 22 and 25 and on Legal Conclusions 2, 3, 5 and 6.

8. Cause does not exist under Business and Professions Code 2960.6 to deny Scorse's application. It was not established that Scorse's QRC certification with the State of Minnesota was equivalent to a license issued to a healing arts practitioner. In fact, the license was issued by the Department of Labor and Industry, State of Minnesota, which does not issue licenses to healing arts practitioners.

This conclusion is based on Legal Conclusion 4 and the failure to present evidence to establish that a registered QRC in Minnesota is a healing arts practitioner within the meaning of Business and Professions Code section 2960.6.

Rehabilitation

9. Extreme emotional or physical difficulties may constitute mitigation if expert testimony establishes such difficulties were a contributing cause of the misconduct. An applicant must establish that he or she no longer suffers from these disabilities or, in the alternative, that he or she is under care for such disabilities that prevents the reoccurrence of such misconduct. See, *Doyle v. State Bar* (1976) 15 Cal.3d 973; see, also, *In re Leardo* (1991) 53 Cal.3d 1.

While psychoneurotic problems may underlie professional misconduct and moral turpitude in many cases, a licensing agency's duty lies in the assurance that the public will be protected in the performance of the duties of the licensee rather than in an analysis of the reasons for the licensee's delinquency. The primary concern must be the fulfillment of proper professional standards, whatever the unfortunate cause, emotional or otherwise. See, *Grove v. State Bar* (1967) 66 Cal.2d 680.

Rehabilitation requires a consideration of those offenses from which one has allegedly been rehabilitated. *Pachecho v. State Bar* (1987) 43 Cal.3d 1041.

Fully acknowledging the wrongfulness of past actions is an essential step towards rehabilitation. See, *Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933. But, the mere expression of remorse does not demonstrate rehabilitation. A truer indication of rehabilitation is presented when a petitioner can demonstrate fitness to practice by sustained conduct over an extended period of time. See, *In re Menna* (1995) 11 Cal.4th 975.

Belated restitution, under threat of disciplinary proceedings, is not helpful in establishing rehabilitation. See, *Fitzpatrick v. State Bar* (1977) 20 Cal.3d 73.

10. Scorse misrepresented his educational background to the Minnesota licensing agency and to clients and he over-billed for his services. This misconduct occurred between 1988 and 1995. Scorse lost his Minnesota QRC certification and suffered other penalties as a consequence. After returning to California, Scorse received a doctoral degree in Psychology. In seeking employment as a psychological assistant, Scorse was less than candid with Dr. Sells, the psychologist he asked to employ and supervise him.

Scorse paid about half of what he was fined after a judgment was rendered.

Scorse expressed remorse, but he offered absolutely no insight into the reasons he engaged in fraud and misrepresentation for more than a decade. He has not sought any type of counseling.

On this record it cannot be concluded that Scorse has rehabilitated himself to the extent that similar conduct will not reoccur. At this time the public will best be protected by the denial of Scorse's application for registration as a psychological assistant.

This conclusion is based on Factual Findings 7-11, 13-19, 21, 22, 25, and 27-29 and on Legal Conclusions 7 and 9.

Costs of Investigation and Enforcement

11. Government Code section 125.3(a) provides in pertinent part:

"... the board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case."

12. A "licentiate" is a person who as received a license to practice an art or a profession. See, *The Random House Dictionary of the English Language* (2nd Edition, Unabridged).


13. Scorse does not hold any license issued by the Board of Psychology. He is an applicant. Business and Professions Code section 125.3 does not apply and there is no legal basis to support an award of costs.

This conclusion is based on Factual Finding 26 and on Legal Conclusions 11 and 12.

ORDER

David M. Scorse's application for registration as a psychological assistant is denied.

DATED: January 10, 2003.


JAMES AHLER
Administrative Law Judge
Office of Administrative Hearings